

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION**

DR. JAMES JONES,
Plaintiff,

v.

ANGELO STATE UNIVERSITY,
Defendant.

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CIVIL ACTION No. 6:09-CV-65

**DEFENDANT'S RULE 12(B)(1) AND 12(B)(6)
MOTION FOR PARTIAL DISMISSAL FOR LACK OF JURISDICTION BASED
UPON ELEVENTH AMENDMENT IMMUNITY AND FAILURE TO STATE A CLAIM**

TO THE HONORABLE SAM CUMMINGS, UNITED STATES DISTRICT JUDGE:

Defendant ANGELO STATE UNIVERSITY (“ASU” or “The University”), hereby files its *Rule 12(b)(1) and 12(b)(6) Motion for Partial Dismissal for Lack of Jurisdiction Based Upon Eleventh Amendment Immunity and Failure to State a Claim*, and in support thereof would show this Court the following:

**I.
INTRODUCTION**

Plaintiff Dr. James Jones sued ASU on July 10, 2009, asserting a myriad of claims under various federal and state constitutional and statutory provisions. Specifically, Jones sued ASU for:

- Religious discrimination under Title VII and Chapter 21 of the Texas Labor Code;
- Age discrimination under the ADEA and Chapter 21 of the Texas Labor Code;
- Religious discrimination under the First and Fourteenth Amendments to the U.S. Constitution;
- Free speech retaliation under the First and Fourteenth Amendments to the U.S. Constitution and Article 1, section 8 of the Texas Constitution;
- Substantive and procedural due process violations under the Fifth and Fourteenth Amendments to the U.S. Constitution and under the Texas Constitution;

- Religious discrimination under the Religious Freedom Restoration Act, Chapter 110 of the Texas Civil Practice and Remedies Code;
- Breach of contract;
- A declaration under the 28 U.S.C. §2201, that Defendant violated his constitutional and/or contractual rights.

Angelo State University has been served with the lawsuit and now files this Motion to Dismiss on the ground that most of Dr. Jones' claims are barred by the doctrine of Eleventh Amendment immunity, and because he has failed to state a claim upon which relief may be granted. Accordingly, the University respectfully requests that the Court dismiss all of the enumerated claims in Dr. Jones' Original Complaint other than Dr. Jones' claims under Title VII of the Civil Rights Act of 1964, as amended.

II. BRIEF IN SUPPORT

As more fully set forth in their attached *Brief in Support of Defendants' Rule 12(b)(1) and 12(b)(6) Motion for Partial Dismissal for Lack of Jurisdiction Based Upon Eleventh Amendment Immunity and Failure to State a Claim*, ASU contends that all of Dr. Jones' claims, except for his claim for religious discrimination under Title VII of the Civil Rights Act of 1964, as amended, are barred by the doctrine of Eleventh Amendment immunity. Further, ASU contends that Dr. Jones' claims under 42 U.S.C. § 1983 and Article 1, section 8 of the Texas constitution are barred for failure to state a valid claim.

III. CONCLUSION

FOR THE REASONS set forth in ASU's attached Brief the University respectfully requests that the Court dismiss Dr. Jones' claims brought pursuant to the Texas Labor Code, the ADEA,

Section 1983 (and the United States Constitution), Article 1, section 8 of the Texas Constitution, the Religious Freedom Restoration Act, breach of contract, and the Federal Declaratory Judgment Act.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a copy of the above *Defendants' Rule 12(b)(1) and 12(b)(6) Motion for Partial Dismissal for Lack of Jurisdiction Based Upon Eleventh Amendment Immunity and Failure to State a Claim* was served by the following manner, on the **27th day of July 2009**, upon the following individuals at the listed addresses:

Frank W. Hill	fh@hillgilstrap.com	<u> X </u>	Via Email to stevehersh@sbcglobal.net
Frank Gilstrap	fgilstrap@hillgilstrap.com	<u> </u>	Via Certified Mail Return Receipt Requested
Michael Y. Kim	mkim@hillgilstrap.com	<u> </u>	Via Facsimile
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